

The term "food" must be interpreted in its ordinary and popular sense namely as an article or kind of food. Such a meaning appears in the Shorter Oxford English Dictionary.

The Sale of Food and Drugs Ordinance (Cap. 148), which was enacted "To make better provision for the sale of food and drugs in a pure state", has the same object as the Municipal Ordinance, namely to safeguard public health, and "food" is there defined as including every article used for food or drink by man.

In my view the term "food" in section 194(4)(a) of the Municipal Ordinance means any article used as food for human consumption.

I do not think it is disputed that meat and vegetables are food in that they are nutritive. It follows therefore that in my opinion raw meat and raw vegetables are "food" within the meaning of section 194(4)(a) of the Municipal Ordinance.

In my opinion, however, live poultry is not "food" within the meaning of section 194(4)(a). Poultry becomes "food" when it has been killed and the sale is that of the flesh and not a live bird. Similarly one cannot say that a cow is "food" within the meaning of section 194(4)(a) until it has been slaughtered. It is to be noted that in the English Food and Drugs Act 1938 the term "article" in relation to food "does not include a live animal or bird".

In the result the appeal in case No. 149 of 1957 is allowed and the conviction is quashed, and the appeals in cases No. 148 of 1957 and No. 150 of 1957 are dismissed.

Order accordingly.

DAUD BIN AWANG NGAH & ORS. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Good and Smith JJ.) May 9, 1958]

[K. L. — F.M. Criminal Appeal No. 9 of 1958]

Criminal Law and Procedure — Incriminating evidence by co-accused — Warning to jury — Corroboration — Warning not matter of law.

There is no rule of law which demands that in every case where an accused person gives evidence which tends to incriminate a co-accused the jury should be warned that it is dangerous to convict upon such evidence unless it is corroborated. Whether or not such a warning should be given to the jury is not a matter of law. It is a matter to be decided in the light of the circumstances of each individual case.

Tan Cheng Seng & Anor. v. R.⁽³⁾ followed. *Seah Chay Tee v. Public Prosecutor*⁽¹⁾ dissented from.

Cases referred to:—

- (1) *Seah Chay Tee v. Public Prosecutor* (1948) M.L.J. 77.
- (2) *R. v. Barnes & Anor.* (1940) 2 All E.R. 229; 27 Cr.App.R. 154; 56 L.T.R. 379.
- (3) *Tan Cheng Seng & Anor. v. R.* (1948) M.L.J. 148, C.C.A.
- (4) *Davies v. Director of Public Prosecutions* (1954) A.C. 378.

C COURT OF APPEAL

P.P. Nair, Balwant Singh and H.L. Wrigglesworth for the appellants.

Ali bin Hassan (Federal Counsel) for the respondents.

D *Thomson C.J.:* — These four appellants were tried jointly before Neal, J., and a jury at Kuala Trengganu for offences committed in connection with the death on 9th November, 1957, of one Abdullah bin Taib.

E It was the case for the prosecution that the third and fourth appellants had hired the first and second appellants to kill the deceased man and that in pursuance of this arrangement the first two appellants had proceeded to the deceased man's place of business where the first appellant entered and killed him by striking **F** him on the head with an axe while the second appellant kept watch outside.

G On these allegations the first appellant was charged with murder in contravention of section 302 of the Penal Code, the second appellant was charged with murder in contravention of section 302 as read with section 34 of the Penal Code and the third and fourth appellants were each charged with abetment of murder in contravention of sections 109 and 302 of the Code.

H In the event all four appellants were convicted of the offences charged against them and sentenced to death. All of them appealed against their convictions and their appeals were dismissed on 8th April, 1958.

I Except on one point we do not consider it necessary to state our grounds of judgment beyond observing that there was evidence which, if it was believed, was sufficient to support each of the convictions and that we were unable to find any misdirection or lack of direction in the long and careful summing-up of the trial Judge. In the circumstances there could be no justification for interfering with the verdict of the jury.

On one point, however, we think we should state our views at greater length because on it there would appear to be a conflict between the law as stated by a Judge of this country and the law as stated by the Court of Criminal Appeal for the Colony of Singapore.

At the trial the first appellant gave evidence which implicated the second and third appellants. He admitted striking the fatal axe blow but said that his intention was not to cause death but merely to injure the deceased (which the jury apparently, and not surprisingly, disbelieved). He went on to give evidence as to the part played in the affair by the second and third appellants and the evidence, to put it at the lowest, was not inconsistent with the prosecution evidence against these appellants. No great point was made of this by counsel for the second appellant either at the trial or before us but both at the trial and before us it was strongly urged for the third appellant that in dealing with this evidence by the first appellant in his charge to the jury the trial Judge should have warned the jury that he (the first appellant) was an accomplice and that he should have gone on to administer the warning that is ordinarily given regarding an accomplice's evidence. On this point great stress was laid on the judgment of Laville, J., in the case of *Seah Chay Tee v. Public Prosecutor*⁽¹⁾.

At the trial the Judge dealt with the point in his charge to the jury as follows:—

"Now, Mr. Justice Laville was dealing with the same point as the one which I have to deal with, i.e. how far the evidence of a co-accused is evidence against the other accused, and Dato Rajasooria said to you Mr. Justice Laville said this: The evidence of a co-accused against his fellow accused is to be given even less weight than that to be given to the evidence of an accomplice and requires stronger corroboration.

Gentlemen, the law, as I appreciate it, does not deal with the degrees of corroboration. Evidence is either corroborated or it is not. I am strengthened in my refusal to direct you in accordance with the statement of Mr. Justice Laville as to the legal position by a reference in what is probably known as the most important text book on criminal law—Archbold's Criminal Pleading. At page 463* therein it is reported that the Court of Criminal Appeal in England, i.e. with 3 Judges, said this:

"Where prisoners are tried jointly, and one of them gives evidence on his own behalf incriminating a co-prisoner, the prisoner who has given the incriminating evidence is not placed in the position of an accomplice, nor does the rule of practice with regard to the corroboration of an accomplice apply

to such a case. The rule applies only to witnesses called for the prosecution.'

My direction to you is that you will disregard the statement of the law quoted by Dato Rajasooria based upon statements by Justice Laville, and that you will accept as a direction from me that the evidence given before you by Accused No. 1 requires no corroboration."

We are not prepared to say that that passage considered as a general statement is an altogether happy one. In particular it is perhaps unfortunate that the passage from "Archbold" was quoted. That passage follows part of the head-note to the "Criminal Appeal Reports" report of the case of *Barnes and Richards*⁽²⁾ and in our view it would be unsafe to take the case in question as authority for anything further than the proposition which is thus stated in the head-note to the "Times Law Reports" report:—

"The rule that the jury should be warned against accepting, without its being corroborated, the evidence of an accomplice of a prisoner does not apply where, there being more than one prisoner, the accused's co-prisoner, not being called as a witness for the prosecution against the accused, gives evidence merely on his own behalf and the jury are not asked to act on that evidence in relation to the accused. Thus, where prisoners, who are tried together on a charge of being jointly concerned in the commission of a crime have elected to give evidence, and one of them in doing so happens incidentally to make a statement which tells against his co-prisoner, the rule with regard to warning the jury about the acceptance of an accomplice's evidence does not arise."

Although, however, the learned Judge may have gone rather too far in his statement of the law of England we agree with what he says relating to the case of *Seah Chay Tee v. Public Prosecutor, supra*. In that case Laville, J., said (at page 78):—

"The evidence of a co-accused against his fellow accused is to be given even less weight than that awarded to the evidence of an accomplice, and requires stronger corroboration."

Strictly speaking that was said *obiter* for it was not necessary for the determination of the case with which His Lordship was concerned which was a case where at the close of the prosecution there was no evidence at all against any of the appellants and where therefore they ought to have been discharged without being called on for their defences. Laville, J., was concerned with the case on appeal from the District Court (as it then was) and it was not necessary to go any further than that in order to allow the appeal.

Later in the same year the question arose in the Court of Criminal Appeal for the Colony of Singapore in the case of *Tan Cheng Seng & Anor. v. Rex*.⁽³⁾ The facts of that case are not

* p. 482 of the 33rd Edition.

reported but the Court (*per* Murray-Aynsley, C.J.) gave judgment as follows):—

“At the hearing one of several co-accused gave evidence on his own behalf which gravely implicated another of the co-accused. It was contended on behalf of the latter that this evidence should have been treated as evidence of an accomplice, and required the same degree of corroboration.

In English cases, in particular *R. v. Barnes and Richards*, it has been held on several occasions that it is not so and we consider that these cases are applicable in this Colony.”

With respect we agree with and adopt that statement by the Singapore Court and we find support for that course in the case of *Davies v. Director of Public Prosecutions*⁽⁴⁾ where Lord Simonds, L.C., referred to the rule that where a person who is an accomplice gives evidence on behalf of the prosecution it is the duty of the Judge to warn the jury that although they may convict upon his evidence it is dangerous to do so unless it is corroborated and observed that this rule “applies only to witnesses for the prosecution”.

The truth of course, is that there is no rule of law which demands that in every case where an accused person gives evidence which tends to incriminate a co-accused the jury should be warned that it is dangerous to convict upon such evidence unless it is corroborated.

Whether or not such a warning should be given to the jury is not a matter of law. It is a matter to be decided in the light of the circumstances of each individual case. In some cases such a warning might not be necessary; in others as a matter of ordinary prudence such a warning would be imperative.

In the present case in our opinion there was no need for any such warning. Indeed it was only up to a point that the first appellant's evidence tended to incriminate the second and third appellants. It is true that it tended to incriminate them in something but if it was believed it was a complete defence not only to any charge of murder against himself but also against any charge of murder against the second appellant and any charge of abetment of murder in contravention of section 109 against the third appellant, or indeed the fourth appellant.

Appeal dismissed.

A KHOR SEEK POK v. PUBLIC PROSECUTOR.

[A. Cr. J. (Rigby J.) November 8, 1957]

[Penang — Criminal Appeal No. 45 of 1957]

Criminal Procedure — Fine — “Liable on conviction to a fine of \$10,000” — Whether mandatory — Dangerous Drugs Ordinance, 1952, s.6.

The appellant in this case was convicted of unauthorised possession of a quantity of raw opium contrary to the provisions of section 6 of the Dangerous Drugs Ordinance, 1952. The relevant words in that section are that a convicted person “shall be guilty of an offence against this Ordinance and liable on conviction to a fine of \$10,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.” The learned President sentenced him to a fine of \$10,000 or 18 months' imprisonment in default of payment.

Held: the penalty of a fine of \$10,000 provided under section 6 of the Ordinance is not mandatory. It is in fact the maximum penalty provided and the Court has discretion to impose a fine of any sum within the maximum amount of \$10,000.

Fine reduced to \$2,000.

Case referred to:—

(1) *Ng Chwee Puan v. R.* (1953) M.L.J. 86.

MAGISTRATE'S CRIMINAL APPEAL.

A. Jayadeva for the appellant.

F. G. Cooke (Federal Counsel) for the respondent.

Rigby J.: — The appellant in this case was convicted of unauthorised possession of a quantity of raw opium, contrary to the provisions of section 6 of the Dangerous Drugs Ordinance, 1952. He was sentenced to pay a fine of \$10,000 or 18 months' imprisonment in default of payment. The maximum fine under section 6 of the Ordinance is, in fact, \$10,000. No reason is given by the learned President as to why he imposed the maximum fine. It may well be, however, that he was of the opinion that having regard to the wording of section 6 he has no alternative but to impose that particular fine. The relevant words of section 6 are that a convicted person “shall be guilty of an offence against this Ordinance and liable on conviction to a fine of \$10,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.” Mr. Jayadeva, for the appellant, pointed out that in other penal sections of this Ordinance the fine specified in the section itself to which a person is liable on conviction is preceded by the words “not exceeding”. In this section — section 6 — the words have been omitted. It may well be that the learned